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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,148	11/24/2003	Renata Chabot	6536-0301	1147

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EXAMINER	
GARCIA, ERNESTO	

ART UNIT	PAPER NUMBER
3679	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/707,148	CHABOT, RENATA	
	Examiner	Art Unit	
	Ernesto Garcia	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 9, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 6, the metes and bounds of the claim is uncertain. In particular, the limitation "which permits older children and adults to step over" as it is uncertain which children are considered older and which adults are capable of stepping over. Further, since children and adults have many physical characteristics, it would be uncertain whether all children, able or disabled, will infringe on the subject matter. The claim does not appear to cover all instances for all children and adults, especially the elderly, and therefore the claim would be uncertain.

Regarding claims 9 and 10, the claims depend from claim 6 and therefore are indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Marshall, 4,431,166.

Regarding claim 2, Marshall discloses, in Figure 1 and 9, a method comprising steps of:

providing low-profile upward extending sections **2**;

appropriately sizing the length and the depth of a sheeting material **6** to substantially conform to a floor (see sizes of Figures 1 and 9); and,

positioning the sheeting material across a portion of the floor. Applicant is reminded that the steps prevent movement of an infant from one area of a house to another and create a barrier to prevent movement of the infant from one area of a house to another by providing the infant with temporary discomfort when the infant touches and applies its own weight to both the top surface of the sheeting material and to at least one of said extending sections. Further, applicant is reminded that in method claims, it is the patentability of the method steps that is to be determined and not the recited structure. Structure not affected in the manipulation sense is given no

patentable weight. Therefore, the low-profile upward extending sections extend upward from the top surface of the sheeting material.

Regarding claims 3, 4 and 7-10, at the outset, it should be noted that in method claims, it is the patentability of the method steps that is to be determined and not the recited structure. Structure not affected in the manipulation sense is given no patentable weight.

Regarding claim 5, Marshall discloses, in Figures 1 and 9, a method comprising steps of:

providing a sheeting material **6**;

appropriately sizing the sheeting material **6**; and

positioning the sheeting material **6**, appropriately sized, in a desired location upon a floor.

Applicant is reminded that that in method claims, it is the patentability of the method steps that is to be determined and not the recited structure. Structure not affected in the manipulation sense is given no patentable weight. Furthermore, applicant is reminded that the sheeting material creates a barrier to prevent further movement of an infant in a particular direction. The step of positioning creates a barrier to prevent movement of an infant in a direction across a barrier. The sheeting material has upward extending low profile sections having a top surface design incapable of

puncturing the skin of an infant yet will provide temporary discomfort to the infant when the infant touches and applies its own weight to a portion of the sheeting material.

Regarding claim 6, Marshall discloses, in Figures 1 and 9, a method comprising steps of:

providing a sheeting material;

sizing the sheeting material; and,

placing the sheeting material upon a floor in a substantially desired location.

Applicant is reminded that that in method claims, it is the patentability of the method steps that is to be determined and not the recited structure. Structure not affected in the manipulation sense is given no patentable weight. Applicant is reminded that the sheeting material creates a barrier preventing movement of an infant from one area of a house to another. The sheeting material is sized for older children and adults to step over while still provide sufficient depth to discourage an infant from attempting to cross. Further, the sheeting material has upward extending low profile sections having a top surface design incapable of puncturing the skin of an infant yet will provide temporary discomfort to the infant when the infant touches and applies its own weight to a portion of the sheeting material.

Response to Arguments

Applicant's arguments filed April 7, 2005 have been fully considered but they are not persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. In particular, applicant has not set forth what step Marshall fails to teach. Applicant has made spurious arguments by indicating that Marshall discloses a garbage can mat or that the garbage can mat is not disclosed as a method for preventing movement of an infant from one area of a house to another by creating a barrier on a floor. In response, it is not the preamble that defines the claims but rather the steps in the body of the method claims.

The applicant has also noted that a large dog would not be deterred by Applicant's low profile barrier. In response, it is not the applicant's low profile barrier that is in question, but rather the capabilities of Marshall's profile barrier. Further, applicant has indicated that the instant invention can as well be used in small domesticated dogs. Therefore, Marshall equally qualifies as prior art.

Applicant has placed emphasis on the limitation "said sheeting material sized for older children and adults to step over while still providing sufficient depth to discourage an infant from attempting to cross" to compare the mat in Marshall from being designed to step upon. In response, this limitation is a structural limitation and has no manipulability sense in the method claim. This argument will be more effective in structure claims, but not in method claims. In any event, the term "step over" is very broad and also can imply stepping on the mat as placing a foot over the mat. Further, despite Marshall teaches the mat designed to step upon, Marshall does not state that a person cannot jump or step over the mat. One of skill would find that any older child, which can be a teenager, can jump over or step over the mat. Moreover, applicant should note that children come in many sizes that even supersede an adult.

In conclusion, in assessing Marshall, skill is presumed on part of the artisan or the user, rather than the lack thereof. In re Sovish, 769 F.2d 738, 226 USPQ 771, 774 (Fed. Cir. 1985). Insofar as Marshall is concerned, the examiner is bound to consider Marshall's disclosure for what steps fairly teaches one of ordinary skill in the art, including inferences which one of ordinary skill in the art would reasonably have been expected to drawn therefrom. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (ccpa 1966) and In re Preda, 401 F.2d 825,826,159 USPQ 342, 344 (CCPA 1968).

Having reviewed Marshall, it is inconceivable to the examiner that a person of ordinary skill in the art would have failed to appreciate the steps disclosed in Marshall to

provide a barrier to any living entity accessing the trash can either inside or outside the house as such a barrier would prevent an infant from moving from one area of the house to another as behind the trash can. Further, to conclude that such a person would not have recognized the benefits of providing the steps used in Marshall would be to improperly assume that the artisan or the user possesses less than ordinary skill. Since children and dogs come in different sizes, it would not be proper to assume that the spikes cannot be less than 1.5 inches.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30-5:30. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272- 7087. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.

May 2, 2005

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
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